

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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	)
Illinois Bell Telephone Company,	)
	)
Complainant,	)
	)
vs.	)
	)
Commonwealth Edison Company,	)
	)
Respondent.	)
	)
Complaint regarding wrongful refusal to	)
provide customer-specific customer	)
transition charges	)

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**COMPLAINT**

Illinois Bell Telephone Company, (“Ameritech Illinois”) brings this Complaint against Commonwealth Edison Company (“ComEd”) pursuant to Section 10-108 of the Public Utility Act (the “Act”). Ameritech Illinois alleges the following:

**The Parties**

1. Complainant, Ameritech Illinois, is a telecommunications service provider in the State of Illinois, with its headquarters located in Chicago, Illinois. Ameritech Illinois is a corporation organized and existing under the laws of the State of Illinois. Ameritech Illinois purchases electric service to operate its many facilities throughout the State of Illinois. Those facilities range from large office buildings to small, remote facilities such as controlled environmental vaults and equipment huts.

2. Respondent, ComEd, is a corporation organized and existing under the laws of the State of Illinois. ComEd is engaged in supplying electrical energy to the public in northern Illinois. ComEd is a public utility as that term is defined in Section 3-105 of the Illinois Public Utilities Act (the “Act”). 220 ILCS 5/3-105.

### **Factual and Legal Background**

#### **A. Delivery Services and Customer Transition Charges**

3. On December 16, 1997, as a part of Public Act 90-561, the Electric Service Customer Choice and Rate Relief Law of 1997 (the “Customer Choice Law”) was signed into law. The Customer Choice Law amended the Public Utilities Act (the “Act”) by adding a new Article XVI, which addresses among other things, the “unbundling” of electric service and the provision of “delivery services” by Illinois electric utilities. The General Assembly found, in adopting the Customer Choice Law, that “[c]ompetition in the electric services market may create opportunities for new products and services for customers and lower costs for users of electricity” (220 ILCS 5/16-101(A)(b)), and that “[a]ll consumers must benefit in an equitable and timely fashion from the lower costs for electricity that result from retail and wholesale competition. . . .” (*id.* at 5/16-101(A)(d)).

4. To implement the General Assembly’s goal of opening Illinois’ electric services market to competition, Section 16-108(a) of the Act requires electric utilities to file delivery services tariffs for service to non-residential customers. 220 ILCS 5/16-108(a). Delivery services are defined as “those services provided by the electric utility that are

necessary in order for the transmission and distribution systems to function so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility. . . ." 220 ILCS 5/16-102.

5. Customers eligible to receive delivery services may take advantage of market-based rates in two ways. First, they may purchase "unbundled" service, including power and energy, from ComEd, rather than taking service at the "bundled" tariff or contract rates that would otherwise apply. Power and energy would then be priced at market rates. Second, customers may purchase delivery services from ComEd while purchasing power and energy from another supplier. See 220 ILCS 5/16-103, 5/16-110. All delivery services customers, regardless of whether they purchase power and energy from ComEd or a competitor, must pay a transition charge, which ComEd has tariffed as a "Customer Transition Charge," or "CTC." Ill. C.C. No. 4, Original Sheet No. 134 (Attachment 1); see 220 ILCS 5/16-102, 5/16-108 (g).

6. The economic attractiveness of a customer's market-based options, whether they purchase power and energy from ComEd or a competitor, is substantially dependent on calculation of the CTC. If the CTC exceeds the savings available by obtaining power and energy at market-based rates, the delivery services option will not be economically attractive. Thus, a customer's access to market-based rates — as intended by the General Assembly — depends on the CTC calculation.

7. The calculation of the CTC, in turn, depends substantially on the “load factor” of the customer or class of customers to which the CTC applies. A customer’s (or customer class’s) load factor is the ratio of average load to peak load, expressed as a percentage, over a particular period of time. Thus, a high load factor indicates a customer providing a relatively steady load, while a low load factor indicates a customer with a more variable load. High load factor customers can be served more cheaply and efficiently than low load factor customers because they can be served to a greater extent from more efficient “baseload” generating capacity.

8. The CTC is equal to a customer’s (or customer class’s) “base revenue,” less the customer’s “delivery services revenue,” a “market value credit” and a “mitigation factor.” 220 ILCS 5/16-102. The load factor is reflected in base revenue and delivery services revenue, both of which generally decrease as load factor increases. In the CTC calculations, a higher load factor would be reflected by lower base revenue, partially offset by lower delivery services revenue. As a result, higher load factor customers (or customer classes), which can be served more efficiently, pay correspondingly lower CTCs.

9. With the exception of Rate 18 and Riders 26 and 27, none of which are applicable here, ComEd calculates the CTCs of customers served under generally applicable tariffs according to the customer class to which the customer belongs. However, customers served under customer-specific agreements are entitled to customer-specific CTC calculations. Specifically, according to the tariff for ComEd’s Rate CTC, “Customer-

specific CTCs shall be calculated for any nonresidential retail customer” that exceed three megawatts in maximum demand, or that took service under any of the following tariffs or contracts during the year preceding the original effective date of the CTC tariff October 1, 1999:

- Rate 18 Standby Service;
- Rider 26 Interruptible Service;
- Rider 27 Displacement of Self Generation;
- Customer-specific Electric Service Contracts.

Attachment 1 at Original Sheet No. 137 (emphasis added). The tariff does not limit the type of Customer-Specific Electric Service Contracts eligible for custom CTC calculations. To the contrary, the tariff expressly requires that such calculations “shall” be provided for “any” customers with customer-specific agreements. (Id.).

10. As explained below, ComEd and Ameritech Illinois have entered into a contract that governs the terms and conditions upon which ComEd supplies electricity to approximately 100 of Ameritech Illinois’ facilities. As also explained below, that contract is a “Customer-Specific Electric Service Contract” within the meaning of the ComEd tariff defining the Customer Transition Charge (“CTC”) applicable to specified ComEd customers. Because the Agreement is a Customer-Specific Electric Service Contract, all of Ameritech Illinois’ facilities covered under the Agreement are entitled to receive customer-specific CTC calculations from ComEd. Nevertheless, as further explained below, ComEd has wrongfully and unreasonably refused to provide customer-specific CTC calculations as requested by Ameritech Illinois.

**B. Ameritech Illinois' Request for a Customer-Specific  
Customer Transition Charge**

11. On July 16, 1997, Ameritech Illinois and ComEd entered into an Electric Service Contract (the "Agreement"). ComEd filed the Agreement for approval by the Illinois Commerce Commission on July 18, 1997, and it was approved by the Commission effective August 27, 1997. (Attachment 2). The Agreement presently covers approximately 100 of Ameritech Illinois' facilities in ComEd's service territory. (See Attachment 3).

12. In July 1999, Ameritech Illinois registered all of the approximately 1400 facilities it owns in ComEd territory in the "9.5 megawatt/10 or more sites" lottery to determine their eligibility to receive delivery services. In September 1999, Ameritech Illinois received notification that its facilities had been granted eligibility.

13. On November 1, 1999, Ameritech Illinois requested customer-specific CTC calculations for all of its accounts served under the Agreement. (Attachment 4). Of the approximately 100 Ameritech Illinois facilities covered under the Agreement, ComEd provided customer-specific CTC's for only two of the largest facilities (neither of which is served under the Agreement). On November 3, 1999, ComEd denied customer-specific CTC calculations for all of the facilities covered by the Agreement. (Attachment 5). Had ComEd provided the customer-specific CTC calculations as requested, customer-specific CTCs reasonably should have been applied beginning with the December 1999 billing cycle.

14. ComEd has taken the position that it serves Ameritech Illinois' facilities under an agreement under Rider 32, entitled "Curtable Service Cooperative" (a "Rider 32 Contract"), and that those facilities are not eligible for customer-specific CTCs. Id.

15. Contrary to ComEd's position, the Agreement is not a Rider 32 Contract. In fact, the Agreement contains prices, terms and conditions that vary significantly from the prices, terms and conditions of Rider 32. Those prices, terms and conditions would not be possible absent a customer-specific agreement. The ways in which the Agreement varies from a Rider 32 Contract include, without limitation, the following:

A. A Rider 32 Contract consists of a standardized, pre-printed, one-page form contract entitled "Standard Rider 32 Contract Addendum, ComEd Energy Cooperative Membership Agreement." Such a contract contains no significant, individually negotiated rates, terms or conditions. Such a contract is styled as an addendum to whatever other agreement the customer has with ComEd. Attachments 6 through 8 to this Complaint are examples of Rider 32 Contracts. By contrast, the Agreement is a far more detailed, stand-alone agreement. Essentially all of its rates, terms and conditions were individually negotiated by ComEd and Ameritech Illinois. On information and belief, the Agreement is unique to Ameritech Illinois.

B. Eligibility for Rider 32 is expressly limited to those customers that enter into a contract that ComEd calls a “Commonwealth Edison Energy Cooperative Membership Agreement.” Ameritech Illinois is not a member of the Commonwealth Edison Energy Cooperative, and the Agreement is called an “Electric Service Contract.” Ill. C.C. No. 4, 2<sup>nd</sup> Revised Sheet No. 95.09.6 et seq. (Attachment 9).

C. Eligibility for Rider 32 is expressly limited to Rate 6L and Rider CB customers. Id. None of the Ameritech Illinois facilities served under the Agreement are or Rider CB customers. A few are Rate 6L customers, but the vast majority of them are Rate 6 customers.

D. Rider 32 does not require customers to purchase all of their required electricity from ComEd, nor does it limit customers’ ability to use other suppliers, fuel switching or co-generation. Id. However, the Agreement requires Ameritech Illinois to purchase from ComEd “all present and future electricity required by the customer . . .” Attachment 2 at § 1.1 (a). The Agreement also forbids “the use of alternative energy supply, including but not limited to purchase or manufacture of electricity from sources other than the Company fuel switching, bypass, the installation of co-generation, self-generation or otherwise.” Id. at § 2(a) (iv).



E. Rider 32 does not require customers to curtail any minimum amount of load. See generally Attachment 9. The Agreement requires Ameritech Illinois to curtail a minimum of 5.300 kilowatts, and it permits ComEd to terminate the Agreement if curtailable load falls below 5.300 kilowatts. Attachment 2 at Recital 2, § 2(a)(iii).

F. Rider 32 merely requires customers to “make reasonable efforts” to curtail load upon notice. Attachment 9 at 2<sup>nd</sup> Revised Sheet No. 95.09.6; see id. at 2<sup>nd</sup> Revised Sheet Nos. 95.09.7, 95.09.9.1. The Agreement provides that Ameritech Illinois will curtail at least 5.300 kilowatts. Attachment 2 at Recital 2.

G. Rider 32 permits the customer to specify a “Target Service Level during Curtailment,” which is the level of load “to or below which the Member will make reasonable efforts to reduce its demand . . .” Attachment 9 at 2<sup>nd</sup> Revised Sheet No. 95.09.6. The Agreement requires a “Target Service Level During Curtailment” of 0 kw (i.e., total curtailment). Attachment 2 at § 1.5(b).

H. Rider 32 Contracts generally are not filed with the Commission for approval. ComEd filed the Agreement for approval with the Commission.

I. The Agreement permits additional facilities to be added from time to time. Attachment 2 at § 1.1(a). A Rider 32 Contract does not. Attachments 6-9.

16. In fact ComEd has described the Agreement as a “Special Contract” on several occasions. (See, e.g., Attachments 10, 11). “Special Contract” is essentially synonymous with “Customer-specific Electric Service Contract.”

17. Ameritech Illinois has requested customer-specific CTC calculations from Illinois Power Company, which provided Ameritech Illinois with custom CTC calculations for the facilities subject to that request in November 1999.

18. As explained above, the CTC calculation depends largely on load factor. The Ameritech Illinois facilities subject to the Agreement generally have substantially higher load factors than those of either the Rate 6 customer class (to which most of those facilities would belong but for the Agreement) or the customer classes according to which ComEd calculated the CTC for those facilities. As a result, by refusing to provide Ameritech Illinois with customer-specific CTC calculations, ComEd has substantially inflated the CTCs applicable to the facilities covered by the Agreement. For example, Ameritech Illinois performed the following calculation for its Northbrook Data Center.

	<u><b>Standard CTC</b></u>	<u><b>Northbrook Customer Specific CTC</b></u>
Base Revenue	\$0.06396	\$0.05541
-Delivery Services Revenue	\$0.01000	\$0.00700
-Market Value Credit	\$0.03067	\$0.03067
-Mitigation Factor	\$0.00500	\$0.00500
=Customer Transition Charge	\$0.01829	\$0.01271

In the above example, the Northbrook Data Center will have to pay \$0.01829 per kWh for CTC instead of \$0.01271 per kWh, or a difference of \$0.00558 per kWh. Nearly all of the accounts served under the Agreement have a similar problem. Their “base revenue” is lower than the class averages base revenue, as a result of their high load factor compared to other customers within the class. As a result, by refusing to provide Ameritech Illinois with customer-specific CTC calculations, ComEd has over-charged Ameritech Illinois by an amount estimated to be between \$1,000,000 and \$1,500,000 annually, beginning with the December 1999 billing cycle.

19. On information and belief, ComEd has provided customer-specific CTCs to other customers with customer-specific contracts.

### **Individual Counts**

#### **Count One**

19. By refusing to provide Ameritech Illinois with customer-specific CTC calculations, ComEd has violated the terms of its CTC Tariff and has therefore violated Section 9-240 of the Act.

#### **Count Two**

20. By refusing to provide Ameritech Illinois with customer-specific CTC calculations, ComEd has unreasonably discriminated against Ameritech Illinois and has therefore violated Section 9-241 of the Act.

### **Count Three**

21. By refusing to provide Ameritech Illinois with customer-specific CTC calculations, ComEd has charged Ameritech Illinois an unjust, unreasonable, discriminatory and excessive rate or charge and has, therefore, violated Sections 9-250 and 9-252 of Act.

### **Conclusion**

Therefore, for the reasons above, Ameritech Illinois respectfully requests that the Commission: (1) find that the Agreement between Ameritech Illinois and ComEd dated July 16, 1997 is a "Customer-specific Electric Service Contract" within the meaning of ComEd's Rate CTC tariff; (2) require ComEd to perform customer-specific CTC calculations for all of the Ameritech Illinois facilities served under the Agreement; (3) require ComEd to begin billing Ameritech Illinois according to such customer-specific CTC calculations, within 30 days of entry of an order granting this Complaint and (4) require ComEd to pay reparations to Ameritech Illinois, including interest, calculated according to such customer-specific CTCs, dating back to the December 1999 billing cycle, within 30 days of entry of an order granting this Complaint.

Respectfully submitted,

Ameritech Illinois Illinois

By: \_\_\_\_\_  
One of its attorneys

Dated: January 18, 2001